# GULF OIL CORPORATION *v.* LEWELLYN, COLLECTOR OF INTERNAL REVENUE FOR THE TWENTY-THIRD DISTRICT OF PENNSYLVANIA.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 310. Argued November 4, 1918.—Decided December 9, 1918.

Dividends of earnings by subsidiaries to a company holding all their stock and controlling them in conducting a single enterprise, the result of the transfers being merely that the main company became the holder of debts in the business, previously due from one subsidiary to another, *held* not taxable as income under the Income Tax Act of October 3, 1913, where the earnings were accumulated before the taxing year and had practically become capital. *Southern Pacific Co.* v. *Lowe*, 247 U. S. 330.
245 Fed. Rep. 1, reversed.

THE case is stated in the opinion.

*Mr. Wm. A. Seifert*, with whom *Mr. J. H. Beal* was on the brief, for petitioner.

*Mr. William C. Herron* for respondent.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit to recover a tax levied upon certain dividends as income, under the Act of October 3, 1913, c. 16, § II, 38 Stat. 114, 166. The District Court gave judgment for the plaintiff, 242 Fed. Rep. 709, but this judgment was reversed by the Circuit Court of Appeals. 245 Fed. Rep. 1. 158 C. C. A. 1.

The facts may be abridged from the findings below as follows. The petitioner was a holding company owning

all the stock in the other corporations concerned except the qualifying shares held by directors. These companies with others constituted a single enterprise, carried on by the petitioner, of producing, buying, transporting, refining and selling oil. The subsidiary companies had retained their earnings, although making some loans *inter se*, and all their funds were invested in properties or actually required to carry on the business, so that the debtor companies had no money available to pay their debts. In January, 1913, the petitioner decided to take over the previously accumulated earnings and surplus and did so in that year by votes of the companies that it controlled. But, disregarding the forms gone through, the result was merely that the petitioner became the holder of the debts previously due from one of its companies to another. It was no richer than before, but its property now was represented by stock in and debts due from its subsidiaries, whereas formerly it was represented by the stock alone, the change being effected by entries upon the respective companies' books. The earnings thus transferred had been accumulated and had been used as capital before the taxing year. *Lynch* v. *Turrish*, 247 U. S. 221, 228.

We are of opinion that the decision of the District Court was right. It is true that the petitioner and its subsidiaries were distinct beings in contemplation of law, but the facts that they were related as parts of one enterprise, all owned by the petitioner, that the debts were all enterprise debts due to members, and that the dividends represented earnings that had been made in former years and that practically had been converted into capital, unite to convince us that the transaction should be regarded as bookkeeping rather than as "dividends declared and paid in the ordinary course by a corporation." *Lynch* v. *Hornby*, 247 U. S. 339, 346. The petitioner did not itself do the business of its subsidiaries and have

possession of their property as in *Southern Pacific Co.* v. *Lowe*, 247 U. S. 330, but the principle of that case must be taken to cover this. By § II, G, (c), 38 Stat. 174, and S, *id.* 202, the tax from January 1 to February 28, 1913, is levied as a special excise tax, but in view of our decision that the dividends here concerned were not income it is unnecessary to discuss the further question that has been raised under the latter clause as to the effect of the fact that excise taxes upon the subsidiary corporations had been paid.

*Judgment reversed.*